

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Petition by the Colorado Public Utilities)	
Commission, Pursuant to 47 C.F.R.)	
§ 54.207(c), for Commission Agreement)	
in Redefining the Service Area of)	
Delta County Tele-Comm, Inc.,)	
A Rural Telephone Company)	

COMMENTS OF TDS TELECOMMUNICATIONS CORP.

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SUMMARY

The Commission's recent decisions in *Virginia Cellular* and *Highland Cellular*, as well as the recently-issued Recommended Decision of the Federal-State Joint Board on Universal Service (the "Recommended Decision"), affect the Commission's consideration of the issues raised in the pending Petition and Supplement of the Colorado Public Utilities Commission ("COPUC") seeking Commission approval to redefine the service area of Delta County Tele-Comm, Inc. ("Delta County"), a rural telephone company subsidiary of TDS Telecommunications Corp.

The *Virginia Cellular* and *Highland Cellular* orders set forth guidelines for determining whether a request to redefine a rural telephone company's service area to allow a competitor to be designated as an ETC in only specified wire centers implicates "creamskimming" concerns. Under those guidelines, COPUC's proposed redefinition of the Delta County service area and the designation of Clear Talk as a CETC in the three highest-density Delta County wire centers implicate creamskimming concerns and are inconsistent with the public interest. Therefore, the Petition should be denied and referred to the COPUC for reconsideration of the redefinition decision and the decision to grant Clear Talk ETC status in three Delta County wire centers.

Alternatively, the Commission should delay consideration of the Petition until after certain issues raised in the pending Joint Board Recommended Decision have been resolved. The Recommended Decision encourages the Commission to evaluate the possibility of imposing national benchmarks, based on per-line support amounts, that would serve as guidelines for state commissions determining whether or not to designate additional ETCs in rural telephone service areas. Because this issue could have particular significance where a

potential ETC seeks redefinition of a rural telephone company's service area to serve only a portion of the rural carrier's (already small) service area, the Commission should delay consideration of the proposed redefinition until after this issue has been addressed and resolved.

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TDS Telecommunications Corp. (“TDS Telecom”), parent company of Delta County Tele-Comm, Inc. (“Delta County”), submits these comments in response to the Supplement to the Petition by the Colorado Public Utilities Commission (“COPUC”) for Commission Agreement in Redefining the Service Area of Delta County.¹ These comments respond to the Commission’s invitation to identify new information or arguments related to the Commission’s *Virginia Cellular*² and *Highland Cellular*³ decisions that are relevant to the

¹ COPUC filed a petition with the Commission seeking agreement with its proposed redefinition of Delta County’s service area in 2002. *Federal-State Joint Board on Universal Service, Colorado Public Utilities Commission Petition for Commission Agreement in Redefining the Service Area of Delta County Tele-Comm, Inc., A Rural Telephone Company*, CC Docket No. 96-45, Petition (Sept. 13, 2002) (“Petition”). Subsequent to filing the Petition, on January 15, 2004, COPUC designated NCTH, Inc. dba Clear Talk as an eligible telecommunications carrier in three Delta County wire centers, pending the outcome of the Petition. COPUC Decision No. R03-1464. The COPUC filed the Supplement to the Petition on May 14, 2004. See *Federal-State Joint Board on Universal Service, Colorado Public Utilities Commission Petition for Commission Agreement in Redefining the Service Area of Delta County Tele-Comm, Inc., A Rural Telephone Company*, CC Docket No. 96-45, Supplement (May 14, 2004) (“Supplement”).

² Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. Jan. 22, 2004) (“*Virginia Cellular*”).

pending Petition.⁴ We also identify a relevant issue raised by the recently-released Recommended Decision of the Federal-State Joint Board on Universal Service (“Joint Board”).⁵

Specifically, TDS Telecom urges the Commission to deny the Petition on the ground that, under the standards set forth in *Virginia Cellular* and *Highland Cellular*, redefining the Delta County service area as proposed would create a risk of rural creamskimming and be inconsistent with the public interest. Alternatively, the Commission should delay approval of the proposed redefinition until after issues related to the designation of eligible telecommunications carriers (“ETCs”) and the redefinition of rural service areas raised in the pending Recommended Decision have been resolved.

I. STATE COMMISSIONS SHOULD NOT SEEK TO REDEFINE RURAL TELEPHONE COMPANY SERVICE AREAS IN THE ABSENCE OF A PETITION FOR ETC DESIGNATION

As an initial matter, TDS Telecom urges the Commission, in connection with its review of the Petition and Supplement, to discourage state public utilities commissions, including the COPUC, from redefining any rural local exchange company (“RLEC”) service area where no competitive carrier has petitioned for designation as an ETC anywhere in the company’s service area. Such redefinition proceedings give insufficient consideration to the concerns identified by the Joint Board as relevant to redefinition decisions.

(continued...)

³ Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service Highland Cellular, Inc Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 04-37 (rel. April 12, 2004) (“*Highland Cellular*”).

⁴ See Public Notice, *Parties are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, CC Docket No. 96-45, DA 04-999 (rel. Apr. 12, 2004) (“Public Notice”).

⁵ Recommended Decision, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission’s Rules Relating to High-Cost Universal Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) (“Recommended Decision”).

In *Virginia Cellular* and *Highland Cellular*, the Commission affirmed that decisions concerning redefinition of a rural telephone company's service area should take into account the concerns of the Joint Board in (1) minimizing creamskimming; (2) recognizing that the Telecommunications Act of 1996 places rural telephone companies on a different competitive footing than other local exchange carriers; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than the study area level.⁶

Where no carrier has sought competitive ETC ("CETC") designation in all or part of a rural study area, state commissions lack the information necessary to determine if a redefinition decision will minimize or exacerbate the potential for rural creamskimming. Moreover, the administrative burdens associated with redefining the service area are incurred with no apparent benefit to subscribers. Accordingly, the Commission should instruct state commissions not to burden rural telephone companies with study area redefinition proceedings when no competitive carrier has sought partial ETC designation in the study area.

Here, the COPUC originally initiated the proceeding to redefine the Delta County study area well before any carrier had sought CETC designation in the Delta County service area. If no carrier had yet sought ETC status in the Delta County study area, the Commission could have – and should have – dismissed the Petition as premature and inappropriate. However, a competitive carrier, Clear Talk, has sought and been granted conditional CETC status in portions of the Delta County study area pending Commission approval of the Petition. Accordingly, it is now appropriate for the Commission to review the Petition and Supplement on

⁶ See *Virginia Cellular* ¶ 41; *Highland Cellular* ¶ 38. "Rural creamskimming occurs when competitors serve only the low-cost, high revenue customers in a rural telephone company's study area." *Virginia Cellular* ¶ 32; *Highland Cellular* ¶ 26.

the merits, taking into account *Virginia Cellular* and *Highland Cellular* in addition to the concerns identified by the Joint Board in connection with redefinition decisions.

II. THE PUBLIC INTEREST WOULD NOT BE SERVED BY GRANTING THE SERVICE AREA REDEFINITION REQUESTED IN THE PETITION

In addition to affirming the continued applicability of the Joint Board concerns to the Commission's decisions concerning redefinition of rural service areas, *Virginia Cellular* and *Highland Cellular* provided additional guidance concerning the circumstances in which creamskimming concerns are implicated. *Virginia Cellular* and *Highland Cellular* explained that the Commission will examine the potential creamskimming *effect* of any petitioner's request to serve only selected wire center(s) within a rural telephone company's service area and to redefine the relevant service area to enable such partial service. Thus, the Commission examined both the population density of the wire center(s) in which the petitioner sought to be designated as an ETC and the disparity between the density of the designated wire center(s) and the other wire centers in the RLEC's service area.⁷ The Commission relied on this comparative density information to determine whether designating the petitioner as an ETC in the specified wire center(s) – and redefining the RLEC's service area to permit such designation – could potentially undermine the RLEC's ability to serve its entire study area.⁸ In *Highland Cellular*, the Commission further noted that where a rural telephone company's "study area includes wire centers with highly variable population densities, and therefore highly variable cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities. This problem may be compounded where the cost characteristics of the incumbent

⁷ *Virginia Cellular* ¶ 35; *Highland Cellular* ¶¶ 29-31.

⁸ *Virginia Cellular* ¶ 35; *Highland Cellular* ¶ 32.

and competitor differ substantially.”⁹ Accordingly, the Commission “reject[ed] arguments that incumbents can, in every instance, protect against creamskimming by disaggregating high-cost support to the higher-cost portions of the incumbent’s study area.”¹⁰

Before applying the *Virginia Cellular* and *Highland Cellular* “creamskimming” tests to the Petition, TDS Telecom suggests one slight modification to ensure that the tests reflect more accurately the cost characteristics of the relevant wire centers. We respectfully suggest that the Commission examine *access line density* – calculated by dividing the number of access lines served by a wire center by the square mileage of the area served – rather than population density when evaluating the potential creamskimming effect of a partial ETC designation and related service area redefinition. In the experience of TDS Telecom, access line density reflects much more accurately the costs of serving a wire center than the density of the population in the area. In fact, the COPUC Petition relied on access line totals in its own creamskimming analysis, but used absolute totals rather than calculating access line density per square mile.

Applying this modified test to the Petition, the potential creamskimming effect is apparent. The access line densities of the Delta County wire centers are shown in the following table. The wire centers in which the COPUC has conditionally designated Clear Talk as an ETC are indicated in bold:

Wire Center	Access Line Density (lines/sq. mile)
Eckert	19.142
Cedaredge	17.086
Hotchkiss	13.160
Paonia	7.707
Crawford	2.368
Somerset	1.052

⁹ *Highland Cellular* ¶ 32.

¹⁰ *Id.*

The table shows that the redefinition of Delta County's service areas as proposed in the COPUC Petition will allow Clear Talk to serve only the highest density, lowest-cost areas while avoiding any obligation to serve the lowest-density, highest-cost wire centers. Moreover, the disparity between the higher-density wire centers Clear Talk proposes to serve and the wire centers it seeks to avoid serving is significant. Thus, the COPUC Petition and Supplement seek to allow Clear Talk to "serve[] only the lowest-cost, highest-density wire centers in a study area with widely disparate population densities, [which may place] the incumbent . . . at a sizeable unfair disadvantage."¹¹ This is the case even if it is not Clear Talk's *intent* to engage in rural creamskimming.¹²

Moreover, although Delta County has disaggregated and targeted its universal service support below the study area level,¹³ the Commission has acknowledged that disaggregation cannot always protect against the effects of creamskimming, particularly where the incumbent's wire centers exhibit highly variable population densities and therefore highly variable cost characteristics.¹⁴ These characteristics are present in the wire centers Clear Talk seeks to serve. As a proxy to demonstrate the variation in access line density across its wire centers, TDS Telecom calculated the access line density in each Census Block Group ("CBG")

¹¹ See *Highland Cellular* at ¶ 32; *Virginia Cellular* at ¶ 35.

¹² In *Highland Cellular*, the Commission expressly noted that even where a competitive carrier is simply seeking ETC designation in its own licensed service area, and thus is not "deliberately seeking to enter only certain portions of [rural telephone] companies' study areas in order to creamskim," "granting a carrier ETC designation for only its licensed portion of the rural study [area] may have the same effect on the ILEC as rural creamskimming" and would be inconsistent with the public interest. *Highland Cellular* ¶¶ 26-27.

¹³ Supplement at 5.

¹⁴ *Highland Cellular* ¶ 32.

within the wire centers in which Clear Talk has been designated as an ETC.¹⁵ The densities of the CBGs do not reflect exactly the densities within the wire centers because the boundaries of the CBGs do not correspond precisely with wire center boundaries (*i.e.*, part of a CBG may be in one wire center while another part is in another wire center). Nonetheless, we believe that the access line densities of the CBGs that are partially or entirely within the relevant Delta County wire centers can serve as a useful indicator of how population and access lines are grouped within the wire centers.

An examination of the access line densities in the CBGs within the Delta County wire centers in which Clear Talk has been designated an ETC shows significant variation in access line density across all three wire centers. For example, there are four CBGs in the Eckert wire center, with access line densities ranging from as high as 61.5 lines/sq. mile to as low as 5.1 lines/sq. mile. Of the six CBGs in the Cederedge wire center, two have access line densities of over 170 lines/sq. mile while one has a density of only 6 lines/sq. mile. In Hotchkiss, the five CBGs' access line densities range from 41.6 lines/sq. mile to only .05 lines/sq. mile. As these figures show, the Delta County "study area includes wire centers with highly variable population densities, and therefore highly variable cost characteristics,"¹⁶ making disaggregation less viable for reducing creamskimming opportunities.¹⁷

¹⁵ Census Block Groups are established by the U.S. Census Bureau for purposes of compiling and analyzing census information. The CBG figures used here are from the 2002 Census.

¹⁶ *Highland Cellular* ¶ 32.

¹⁷ Even where the wire centers within a study area do not exhibit highly variable population densities, disaggregation does not fully protect against the potential harm caused to the incumbent by creamskimming. Although disaggregation and targeting of universal service support can ensure that rural telephone companies continue to recover some of the direct costs of serving their most high-cost wire centers (which are not subject to competition), certain cross-wire-center network and overhead costs may not be fully reflected in disaggregation plans. If universal service payments for lower-cost areas subject to competition eventually decline, those cross-

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In addition, because Colorado requires that local service rates be averaged across a local carrier's service area, the portion of costs recovered from rates (as opposed to from the universal service fund) is not "disaggregated." This means that customers in relatively high-density wire centers subsidize, to some extent, the provision of service to customers in relatively low-density wire centers and that the loss of customers in the high-density wire centers could undermine Delta County's ability to serve customers in its low-density wire centers. Thus, disaggregation of universal service funding alone does not ensure that the public interest will be served by the proposed redefinition of the Delta County service area and the designation of Clear Talk as a CETC in the three most dense wire centers in the Delta County study area.

In sum, the redefinition of the Delta County study area sought in the Petition and Supplement would be inconsistent with the public interest under *Virginia Cellular* and *Highland Cellular* because the redefinition would implicate creamskimming concerns and potentially undermine Delta County's ability to serve its entire study area. Accordingly, the Petition must be denied and referred to the COPUC for reconsideration of the redefinition decision and the decision to designate Clear Talk as an ETC in only portions of the Delta County study area.

III. THE COMMISSION SHOULD NOT CONSIDER THE PROPOSED SERVICE AREA REDEFINITION UNTIL AFTER THE COMMISSION HAS RESOLVED THE PER-LINE SUPPORT ISSUES RAISED IN THE RECOMMENDED DECISION

The Commission is currently evaluating a number of proposals to revise the rules relating to High-Cost universal service support and the criteria and procedures for designating

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wire-center costs (which will persist as the rural incumbent continues to maintain its network as the "carrier of last resort" throughout its service area) may not be fully recovered.

ETCs eligible to receive that support.¹⁸ One of the issues identified in the Recommended Decision as meriting further consideration by the Commission is the potential use of specific benchmarks, based on per-line support, to guide state and federal regulators deciding whether the public interest would be served by designation of one or more competitive ETCs in a rural service area.¹⁹ As the Joint Board noted, per-line support can serve as a useful marker for determining whether the line density, population density, distance between wire centers, loop lengths and levels of investment in a particular rural service area can appropriately support the entry of one or more competitive carriers.²⁰ Although the Joint Board was unable to reach a consensus to recommend specific per-line support benchmarks, the Recommended Decision does recognize the value of adopting per-line support benchmarks and recommends that the Commission solicit comment on whether such benchmarks merit consideration by the Commission.²¹

Per-line support benchmarks could be especially relevant where a potential ETC seeks to redefine a rural telephone company's service area to serve only select wire centers within the RLEC's territory. By subdividing a rural service area and further reducing the already

¹⁸ The Joint Board issued a request for comments on these issues in February 2003. Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission's Rules Relating to High-Cost Universal Service Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 03J-1 (rel. Feb. 7, 2003) ("*High Cost/ETC Notice*"). Commenters identified a number of factors the Commission should consider in determining whether to grant ETC designation, especially in rural service areas. The Joint Board has issued a Recommended Decision, which is now before the Commission.

¹⁹ Recommended Decision ¶ 44.

²⁰ *Id.* ¶ 43. The Joint Board concluded that "[i]f the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund. Moreover, if the Commission were to cap per-line support upon entry of a competitive ETC and impose a primary-connection restriction, as discussed [in the Recommended Decision], designating an excessive number of ETCs could dilute the amount of support available to each ETC to the point that each carrier's ability to provide universal service might be jeopardized." *Id.*

²¹ *Id.*

small subscriber base for purposes of universal service funding and competitive ETC designation, a competitive entrant could further reduce the economies of scale present in rural territories and create smaller service areas that are even less capable of supporting competitive entry than a rural company's full service area. Diluting support to these areas, on a piecemeal basis throughout the rural telephone company's service area, could be even more damaging to the ETCs' ability to provide universal service throughout the rural area.

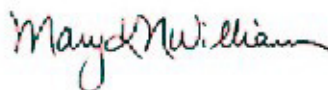
Because of the potential harm to universal service goals – as recognized by the Joint Board – that could result from designating multiple ETCs in small, wire-center-level rural service areas with high per-line support, the Commission should decline to approve any service area redefinitions necessitated by ETC designations in partial rural service areas until after the Commission has addressed the possibility of adopting specific per-line support benchmarks to guide decisionmakers considering designating competitive ETCs in rural service areas (and partial rural service areas specifically).

CONCLUSION

For the foregoing reasons, the Commission should reject the Petition and Supplement and refer them to the COPUC for reconsideration of its decisions to redefine the Delta County service area and designate Clear Talk as a competitive ETC in three of the six Delta County wire centers. Alternatively, the Commission should delay consideration of the Petition until after the Commission has resolved the issues related to per-line support raised in the pending Joint Board Recommended Decision.

Respectfully submitted,

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A handwritten signature in blue ink, appearing to read "Mary Newcomer Williams".

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